

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JAMES DRAIN and RACHEL DRAIN, *et al.*,

Plaintiffs,

Civ. No. 04-0399 MV/KBM

vs.

WELLS FARGO BANK, MINNESOTA,
NA, as TRUSTEE for ITLA MORTG.,
LOAN SECURITIZATION 2002-1,LLC, and
ACCREDITED HOME LENDERS INC., and
FAIRBANKS CAPITAL CORP., UTAH and
its Director, BASMAJIAN T. DOYLE,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on Plaintiffs' Motion to Set Aside Default for Defendants Well Fargo and Fairbanks on Their Counterclaims, filed December 6, 2004, [**Doc. No. 50**]. For the reasons stated in Magistrate Judge Molzen's Proposed Findings and Recommended Disposition and Order on Certain Pending Motions, filed June 17, 2005, [Doc. No. 151], Plaintiffs' motion will be **GRANTED**.

IT IS THEREFORE ORDERED that Plaintiffs' Motion to Set Aside Default for Defendants Well Fargo and Fairbanks on Their Counterclaims, filed December 6, 2004, [**Doc. No. 50**] is **GRANTED**. The Clerk's entry of default judgment against Plaintiffs on the counterclaims asserted by Defendants/Counter-Plaintiffs Wells Fargo and Fairbanks Capital

Corp., filed October 21, 2004, [Doc. No. 39], is hereby set aside.

Dated this 19th day of August, 2005.



MARTHA VAZQUEZ
U. S. DISTRICT COURT JUDGE

Attorney for Plaintiffs:
Mike Bello, Esq.

Attorneys for Defendants:
Cynthia Tessman, Esq.
Dylan O'Reilly, Esq.